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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/165,034 10/01/98 NEELY

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IM22/0331

EXAMINER
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TORRES VELAZQUEZ, N

ART UNIT	PAPER NUMBER
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1771

DATE MAILED: 03/31/00

4

**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner of Patents and Trademarks**

## Office Action Summary

Application No.

09/165 034

Applicant(s)

NEELY ET AL

Examiner

Norca L. Torres-Velazquez

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

### Status

- 1) ☐ Responsive to communication(s) filed on 01 October 1998.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☐ Claim(s) 1-48 is/are pending in the application.
- 4a) Of the above claim(s) 17-26 is/are withdrawn from consideration.
- 5) ☐ Claim(s) 27-48 is/are allowed.
- 6) ☐ Claim(s) 1-7 and 10-16 is/are rejected.
- 7) ☐ Claim(s) 8 and 9 is/are objected to.
- 8) ☐ Claims 1-48 are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. § 119

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- a) ☐ All b) ☐ Some \* c) ☐ None of the CERTIFIED copies of the priority documents have been:
1. ☐ received.
2. ☐ received in Application No. (Series Code / Serial Number) \_\_\_\_\_.
3. ☐ received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. & 119(e).

### Attachment(s)

- 14) ☒ Notice of References Cited (PTO-892)
- 15) ☒ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 16) ☒ Information Disclosure Statement(s) (PTO-1449; Paper No(s) \_\_\_\_\_)
- 17) ☐ Interview Summary (PTO-413) Paper No(s) \_\_\_\_\_
- 18) ☐ Notice of Informal Patent Application (PTO-152)
- 19) ☐ Other

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## DETAILED ACTION

### *Election/Restrictions*

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
  - I. Claims 1-16 and 27-48, drawn to a product, classified in class 442, subclass 400.
  - II. Claims 17-26, drawn to a method, classified in class 28, various subclasses.

The inventions are distinct, each from the other because of the following reasons:

2. Inventions II and I are related as process of making and product made. The inventions are distinct if either or both of the following can be shown: (1) that the process as claimed can be used to make other and materially different product or (2) that the product as claimed can be made by another and materially different process (MPEP § 806.05(f)). In the instant case the product can be made by embossing.
3. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.
4. During a telephone conversation with Tim Cassidy on 3/8/00 a provisional election was made without traverse to prosecute the invention of group I, claims 1-16 and 27-48. Affirmation of this election must be made by applicant in replying to this Office action. Claims 17-26 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

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5. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a petition under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 1-7 and 10-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over MARSHALL (US Patent 4,095,007).

MARSHALL discloses a non-woven fabric 10 having alternating stripes of high fiber density areas 11 and low fiber density areas 12. (Column 2, lines 48-50; refer to Fig. 1). A majority of the fibers in said low fiber density areas being uniformly distributed therein and oriented in a direction substantially normal to the axis of the striped area and, a majority of the fibers in the high fiber density area that lies directly adjacent to low fiber density areas being uniformly distributed therein and oriented in a direction substantially parallel with the stripes of the low fiber density area. (Column 5, lines 56-66).

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It appears from drawing 1A that at least 25% of the areas shown are of high fiber density. The applicant doesn't show criticality to the use of spunbonded web, since such forms of nonwoven are well known in this art to serve similar functions to those of MARSHALL, substitution of one type for another would have been obvious motivated by cost or availability. Changes in form or shape are considered obvious design choice. *In re Dailey (149 USPQ 47)*.

Regarding claim 10, it is well known in the art to use crimped fibers in nonwoven webs, since it is known that crimped fibers increase nonwoven tensile strength. MARSHALL discloses the use of rayon fibers; the reference also points out that any other fibers used by those skilled in the art of nonwoven fabrics could also be used. (Column 6, lines 18-19). Rayon is a polymeric fiber; therefore, the use of fibers that comprise pulp fibers or polymeric fibers would be obvious to a person having ordinary skill in the art.

MARSHALL discloses that air laid webs have been used in the prior art. (Refer to Column 1, lines 36-38).

It would have been obvious at the time the invention was made to a person having ordinary skill in the art to modify the nonwoven web to comprise crimped fibers, pulp fibers and polymeric fibers to increase the non-woven tensile strength.

8. Claims 10, 13 and 15-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over MARSHALL as applied to claim 1 above, and further in view of SHAWVER et al. (US Patent 5,425,987).

Although MARSHALL discloses the use of rayon fibers in the nonwoven web, and points out that any other fibers used by those skilled in the art of nonwoven fabrics could also be

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used. It fails to disclose the use of multicomponent polymeric fibers. MARSHALL also fails to teach the use of an air laid web and crimped fibers.

SHAWVER et al. discloses a nonwoven fabric made with multicomponent polymeric strands. (Abstract). SHAWVER et al. discloses a bicomponent nonwoven fabric that is made from polymeric fibers or filaments including first and second polymeric components that remain distinct. (Column 2, lines 6-9)

SHAWVER et al. also teaches that nonwoven webs may be formed by cutting meltspun filaments into staple fibers and then forming a bonded-carded web or by laying the continuous bicomponent filaments onto a forming surface and thereafter bonding the web. To increase the bulk of the bicomponent nonwoven webs the bicomponent fibers or filaments are often crimped. (Column 2, lines 26-33).

Since MARSHALL and SHAWVER et al. are both from the same field of endeavor, the purpose disclosed by SHAWVER et al. would have been recognized in the pertinent art of MARSHALL.

It would have been obvious at the time the invention was made to a person having ordinary skill in the art to modify a nonwoven web to comprise multicomponent polymeric fibers, air laid web and crimped fibers for the purpose of producing nonwoven materials having desirable combinations of physical properties such as softness, strength, durability, uniformity and absorbency. (SHAWVER et al. Col. 2, lines 67-68 – Col. 3, lines 1-3) Crimped fibers are known in the art to increase tensile strength.

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*Allowable Subject Matter*

9. Claims 8-9 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The prior art does not teach a nonwoven web as claimed in the independent claim that has a first basis weight that is at least 1.5 times greater than the second basis weight, or that the first basis weight and second basis weight are from about 0.2 ounces per square yard to about 9 ounces per square yard.

10. Claims 27-34 and 35-48 are allowed.

11. The following is a statement of reasons for the indication of allowable subject matter: The prior art does not teach a nonwoven web comprising polymeric fibers as claimed in claim 27 that comprises a first basis weight being at least 1.5 times greater than a second basis weight.

The prior art fails to teach a laminate comprising a first layer comprising a substrate and a nonwoven web adhered to the substrate as claimed in claim 35; in which the nonwoven web defines first areas having a first basis weight and second areas having a second basis weight.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Norca L. Torres-Velazquez whose telephone number is 703-306-5714. The examiner can normally be reached on Monday-Thursday 7:30-5:00 pm and alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on 703-308-2414. The fax phone numbers for the

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organization where this application or proceeding is assigned are 703-305-3599 for regular communications and 703-305-3599 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1495.

nlt *nl*  
March 24, 2000

  
**TERREL MORRIS**  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 1700